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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/722,878 | 11/27/2000 | Eric Christian Hince | | 6077 |

7590 07/06/2004
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PO Box 293
Florida, NY 10921

EXAMINER

TOOMER, CEPHIA D

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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1714

DATE MAILED: 07/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/722,878 | ERIC HINCE | |
| | Examiner | Art Unit | |
| | Cephia D. Toomer | 1714 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18,21-34,37 and 38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 21-34 and 38 is/are allowed.
- 6) ☐ Claim(s) 1-18 and 37 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 10, 2004 has been entered.
2. This Office action is in response to the RCE filled March 10, 2004 and the amendment after final filed September 24, 2003 in which claim 1 was amended.
3. It should be noted that the proper claim identifier for previously amended claims is—previously presented--.
4. The 102(b) rejection is withdrawn, as well as the 103(a) rejection over Gago and Felix further in view of Fusey and Gaffar (claims 21-34).

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 37 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 37 is a dependent claim of canceled claim 3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 7-8, 13-14, 17-18 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gago (US 4,470,839) for the reasons of record.

Claims 5, 11-12 and 15-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gago, as applied to the claims above, further in view of Felix (US 5,725,885) for the reasons of record.

Claims 6 and 9-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gago in view of Felix, as applied to the claims above, further in view of Fusey (US 3,796,637).

Gago and Felix fail to teach a source of nitrogen derived from nitrate and organic disintegrates. However, Fusey teaches this difference.

Fusey teaches a composition for bio-remediation comprising 10-40% of a metal peroxide, nitrogenous substances (ammonium nitrate) and nutrient substances such as molasses and other sugars starches (see abstract; column 2, lines 13-18).

It would have been obvious to one of ordinary skill in the art to include the nitrate and molasses in the present composition because Fusey teaches that these compounds assist the metal peroxide (oxygen generating compound) in performing its attendant function.

Applicant's arguments and declaration have been taken under consideration but are not deemed persuasive.

Applicant argues that Gago does not disclose a composition that comprises at least two complex phosphates and that the examples of Gago disclose the use of only one complex phosphate.

Gago teaches at column 2, lines 67-68 that a mixture of the complex phosphates may be used. This suggests what applicant has done. With respect to the examples of Gago, it is well settled that a reference is not limited to its examples but is relied upon for all that it teaches.

Applicant argues that unexpected properties are obtained upon practicing the present invention.

Applicant's data in the specification and that of the declaration have been considered. However, the data are not persuasive. Applicant discloses in the declaration compositions containing 92.5% to 94.5% calcium peroxide and 2.5 and 4.75% combined total of complex inorganic sodium phosphates. The showings are not commensurate in scope with the claims. Applicant broadly and generically claims the active oxygen compound and the complex phosphates. The examiner cannot ascertain if the results are unexpected. There is no data to compositions wherein 20% of active oxygen compound and 80% complex phosphate are used. Also, there are numerous other compounds that function as oxygen generating compounds that were not even contemplated by applicant and are not exemplified.

Applicant argues that unexpected advantages are obtained when the present invention is in a granular form.

The base claim is devoid of such language and Gago teaches that the composition of his invention may be prepared in several compacted forms. Also, Applicant is comparing his granular form to powdered slurry. Gago does not teach such slurry.

Applicant argues that one of the advantages of the present invention is to extend the period of oxygen release as long as practical.

Gago also teaches that his composition releases oxygen for a period of time that is practical. Gago objective and Applicant's objective appear to be the same.

Applicant argues that in Example 3 of the present invention that series 4 and 5 continued to release high levels of dissolved oxygen for more than 250 days. Applicant argues that these results are unexpected.

The examiner does not find such results in Example 3. The data for Example 3 is only for 22 days. Clearly, Gago meets or exceeds this time period.

Applicant argues that there is no motivation to combine Gago and Felix. Applicant argues that Gago is non-analogous art.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Gago and Felix are both directed to oxygen releasing composition that are to be used in amending an environmental setting. Applicant's claims are directed to a composition that provides a sustained release of active oxygen that is used in an environmental setting.

Applicant argues that Fusey and Felix teach away from the present invention by disclosing the use of ammonium-containing compounds as sources of nitrogen.

Applicant states that his invention is ammonium-free.

The examiner respectfully disagrees. In claim 6, applicant recites "other soluble salts of nitrate." This recitation includes ammonium nitrate.

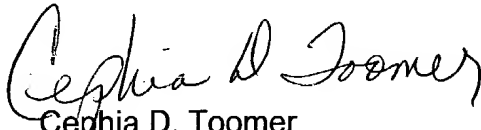
Claims 21-34 and 38 are allowable because the prior art fails to teach or suggest the claimed composition and applicant has shown that unexpected results are obtained when the claimed compounds are used in their respective proportions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Cephia D. Toomer
Primary Examiner
Art Unit 1714

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